

1990

State of Utah v. James Allen Deal and Susan Anita Deal : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

V. Lowry Snow; Lewis P. Reece; Snow & Jensen; Attorneys for Appellants.

Paul F. Graf; O. Brenton Rowe; Attorneys for Appellee.

Recommended Citation

Brief of Appellee, *Utah v. Deal*, No. 900434 (Utah Court of Appeals, 1990).

https://digitalcommons.law.byu.edu/byu_ca1/2826

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

DOCKET NO. C 134-CA

IN THE UTAH COURT OF APPEALS FOR THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff and Appellee,	:	Case No. 900434-CA
vs.	:	
JAMES ALLEN DEAL and SUSAN	:	Priority No. 2
ANITA DEAL	:	
Defendants and Appellants.	:	

BRIEF OF APPELLEE

APPEAL FROM THE FIFTH CIRCUIT COURT, STATE
OF UTAH, WASHINGTON COUNTY, ST. GEORGE
DEPARTMENT, THE HONORABLE ROBERT F. OWENS,
PRESIDING.

Paul F. Graf (1229)
Washington County Attorney
O. Brenton Rowe (2815)
Deputy Washington County Attorney
178 North 200 East
St. George, Utah 84770

Attorneys for Appellee

V. Lowry Snow (3030)
Lewis P. Reece (5785)
SNOW & JENSEN
150 North 200 East, Suite 203
P.O. Box 2747
St. George, Utah 84771-2747
Telephone: (801) 628-3688

Attorneys for Appellants

FILED

JAN 10 1991

OF APPEALS

IN THE UTAH COURT OF APPEALS FOR THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff and Appellee, : Case No. 900434-CA
vs. :
JAMES ALLEN DEAL and SUSAN : Priority No. 2
ANITA DEAL :
Defendants and Appellants.

BRIEF OF APPELLEE

APPEAL FROM THE FIFTH CIRCUIT COURT, STATE
OF UTAH, WASHINGTON COUNTY, ST. GEORGE
DEPARTMENT, THE HONORABLE ROBERT F. OWENS,
PRESIDING.

Paul F. Graf (1229)
Washington County Attorney
O. Brenton Rowe (2815)
Deputy Washington County Attorney
178 North 200 East
St. George, Utah 84770

Attorneys for Appellee

V. Lowry Snow (3030)
Lewis P. Reece (5785)
SNOW & JENSEN
150 North 200 East, Suite 203
P.O. Box 2747
St. George, Utah 84771-2747
Telephone: (801) 628-3688

Attorneys for Appellants

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES.....	ii
JURISDICTION AND NATURE OF PROCEEDINGS.....	1
STATEMENT OF ISSUES PRESENTED AND STANDARD OF REVIEW.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	2
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT	
POINT I THE AFFIDAVIT IN SUPPORT OF THE WARRANT TO SEARCH DEFENDANTS' RESIDENCE WAS SUPPORTED BY PROBABLE CAUSE.....	4
POINT II DEFENDANTS FAILED TO DEMONSTRATE ANY BASIS TO OVERCOME THE PRIVILEGE AGAINST DISCLOSURE OF THE IDENTITY OF THE CONFIDENTIAL INFORMANT.....	5
POINT III THE EVIDENCE PRESENTED BY THE STATE WAS SUFFICIENT TO SUSTAIN DEFENDANTS' CONVICTIONS FOR POSSESSION OF DRUG PARAPHERNALIA.....	6
CONCLUSION.....	7

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>Illinois v. Gates</u> , 462 U.S. 213 (1983).....	4
<u>Roviaro v. United States</u> , 353 U.S. 53 (1957).....	5
<u>State v. Babbell</u> , 770 P.2d 987 (Utah 1989).....	4
<u>State v. Brown</u> , 143 Utah Adv. Rep. 24 (Utah Ct. App 9/12/90) ..	4
<u>State v. Cantu</u> , 750 P.2d 591, 593 (Utah 1988).....	2
<u>State v. Forshee</u> , 611 P.2d 1222 (Utah 1980).....	5
<u>State v. Fox</u> , 709 P.2d 316, 318 (Utah 1985).....	6
<u>State v. Hansen</u> , 732 P.2d 127 (Utah 1987).....	1
<u>State v. Moore</u> , _____ P.2d _____, 147 Utah Adv. Rep. 28 (Utah Ct. App. 11/8/1990).....	6
<u>State v. Mooseman</u> , 794 P.2d 474 (Utah 1990).....	6
<u>State v. Stromberg</u> , 783 P.2d 54, 56, 57 (Utah App. 1989).....	1

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

	Page
Utah Code Annotated Section 57-37a-5(1) (1981).....	1
Utah Code Annotated Section 78-2A-3(2) (d) (1990).....	1
U.S. Const. amendment IV.....	1
Utah Const. art. 1 Section 14.....	1

IN THE UTAH COURT OF APPEALS FOR THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff and Appellee, : Case No. 900434-CA
vs. :
JAMES ALLEN DEAL and SUSAN : Priority No. 2
ANITA DEAL :
Defendants and Appellants.

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from the Circuit Court's adjudication that James A. Deal and Susan A. Deal possessed drug paraphernalia with intent to use the same in violation of Utah Code Ann. Section 58-37a-5(1)(1981). This Court has jurisdiction to hear the appeal pursuant to Utah Code Ann. Section 78-2a-3(2)(d)(1990).

STATEMENT OF ISSUES PRESENTED AND STANDARD OF REVIEW

1. Did the trial court err in denying Defendants Motion to Suppress Evidence when it held that the issuance of the search warrant was supported by probable cause. The standard of review for denial of a motion to suppress evidence is whether the magistrate had a substantial basis to conclude that in the totality of the circumstances, the affidavit adequately established probable cause for issuance of the search warrant, State v. Stromberg, 783 P.2d 54 (1989); see also State v. Hansen, 732 P.2d 127 (1987).

2. Did the trial court err in denying Defendants Motion to Disclose the Identity of the Confidential Informant when it held that the interests of justice would be best served by denying disclosure of the informants identity.

3. Was there sufficient evidence to support the trial courts finding that Defendants possessed drug paraphernalia with intent to use it. The standard of review for this issue on appeal is whether in view the evidence in the light most favorable to the verdict, the Court of Appeals finds that reasonable minds must have entertained a reasonable doubt that the Defendants committed the crime of which they were convicted. See State v. Cantu, 750 P.2d 591, 593 (Utah 1988).

STATEMENT OF THE CASE

The Plaintiff concurs in the statement of the case as set forth by Appellants.

STATEMENT OF FACTS

The Plaintiff concurs in the statement of fact as set forth by Appellants.

SUMMARY OF ARGUMENTS

1. Plaintiff argues that the affidavit supporting the issuance of the search warrant contained specific facts sufficient to support the determinations by the magistrate and the trial court that probable cause existed to search Defendants' home for contraband. The affidavit contained assertions by the affiant of 1) instances of prior truthfulness of the informant, 2) facts personally observed by

the informant and 3) a prior criminal drug offense conviction of one of the Defendants. The magistrate interpreted the language of the affidavit and reached a "practical, common sense" decision that contraband would probably be found in the Defendant's home. This interpretation was a reasonable one and was upheld by the trial courts later finding of probable cause.

2. Plaintiff argues the Defendants failed to meet their burden to show why the identity of the informant should be disclosed. At the hearing Defendants relied entirely upon the language of the affidavit supporting issuance of the search warrant for their home. They presented no evidence that the affidavit deliberately or recklessly provided false or misleading information that was relied upon by the trial court below in finding probable cause to search the home. The Defendants failed to present any other evidence in support of their motion that demonstrated a need to overcome the privilege against disclosure of a confidential informant. Later at trial, the Defendants did not raise any issue or show any need to produce the informant in their defense against the charges for which they stand convicted.

3. Finally Plaintiffs argue that the evidence produced at trial was sufficient to sustain the Defendants' convictions for possession of drug paraphernalia. Despite the Defendants' failure to marshall all of the facts supporting the verdict the record reveals the trial court considered law and found facts raised by the evidence. The factual basis supporting the verdicts should not be disturbed unless

clearly erroneous. Viewing the evidence in the light, most favorable to the verdict supports the trial courts verdicts against each defendant.

ARGUMENT

POINT I

THE AFFIDAVIT IN SUPPORT OF THE WARRANT TO SEARCH DEFENDANTS' RESIDENCE WAS SUPPORTED BY PROBABLE CAUSE.

The United States Constitution and the Utah Constitution both require a finding of "probable cause supported by oath or affirmation" before a search warrant may be issued. U.S. Const. Amend. IV; Utah Const. Art. I, Sec. 14. The trial court does not conduct a de novo review of the magistrate in determining if probable cause exists to support issuance of a search warrant. Illinois v. Gates, 462 U.S. 213 (1983); State v. Babbell, 770 P.2d 987, 991 (quoting Gates, 462 U.S. at 238-239); see State v. Brown _____ P.2d _____, 143 Utah Adv. Rep. 24 (Utah Ct. App. 9/12/90). Similarly, an appellate court does not review the trial court's determination de novo. Brown, 145 Utah Adv. Rep. at 25 (quoting State v. Ashe, 745 P.2d 1255, 1258, (Utah, 1987). The affidavit the trial court reviewed at para 6 asserted the informant had given truthful information on three prior occasions. It also stated that the facts stated by the informant were personally observed on the same day that this information was provided to the affiant (R at 4 para 5). The affidavit at para 7 further set forth the affiants knowledge of Susan

Deal's prior conviction for a drug offense. The trial court reviewed these facts and found that a reasonable interpretation of the affiants statements supported probable cause to issue the search warrant. This finding was not clearly erroneous and therefore should be sustained on this appeal.

POINT II

DEFENDANTS FAILED TO DEMONSTRATE ANY BASIS TO OVERCOME THE PRIVILEGE AGAINST DISCLOSURE OF THE IDENTITY OF THE CONFIDENTIAL INFORMANT.

The Defendants relied solely on the language of the affidavit in support of the search warrant for their residence in attempting to show that the identity of the informant was necessary to present a defense. (Appellants Brief at page 14). The Defendants did not attempt to show that the assertions of the affidavit relied on by the trial court were deliberately false or recklessly misleading. Since the Defendants could have cross examined Officer Weston (the affiant Officer) as to the truthfulness and completeness of the affidavit at the hearing on their Motion to Disclose Identity, but did not do so, they failed to establish any basis to dispute facts set forth in the affidavit. The trial court was entitled to rely on facts, asserted by Officer Weston that were not disputed by the Defendants. These facts were sufficient to sustain the trial courts determination that denying Defendants Motion would best serve the interests of justice. State v. Forshee, 611 P.2d 1222 (Utah 1980); see Roviaro v. United States, 353 U.S. 53 (1957). The Defendants at trial never raised any

issue or demonstrated any need to produce the informant to present a defense and the need for disclosure became academic.

POINT III

THE EVIDENCE PRESENTED BY THE STATE WAS SUFFICIENT TO SUSTAIN DEFENDANTS' CONVICTIONS FOR POSSESSION OF DRUG PARAPHERNALIA.

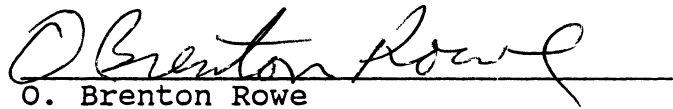
The Defendants on appeal from a criminal bench trial are required to marshall all of the evidence supporting the findings of the trial court and then show that it is insufficient when view in the light most favorable to the court below. State v. Mooseman, 794 P.2d, 474 (Utah 1990). The Defendants should be required to marshall the evidence in support of the verdict of the trial court before the sufficiency of evidence claims are considered, State v. Moore, _____ P.2d _____, 1947, Utah Adv. Rep. 28 (Utah Ct. App. 11/8/90). Nevertheless, the trial court reviewed the evidence presented at trial in light of case authority it found applicable to the case before it (\$ at 66, pp 63 & 64); State v. Fox, 709 P.2d 316 (Utah 1985). The trial court evidence admitted as drug paraphernalia (R at 66, p 63). The court determined that the drug paraphernalia was found in the Defendants' bedroom, an area each Defendant had control over but excluded the likelihood that other members of the household would use it to hide contraband (R at 66, pp 63 & 64). Lastly the court held that the Defendants jointly possessed the paraphernalia (R at 66, p 64).

The evidence at trial was sufficient to support the trial courts verdict of guilty rendered against each Defendant.

CONCLUSION

For the forgoing reasons, Plaintiff respectfully requests this court to find that the trial court properly denied Defendants Motion to Suppress as the Warrant was supported by probable cause, that the trial court properly denied Defendants Motion to Disclose the Confidential Informants Identity, and that there was sufficient evidence to sustain the trial courts verdict of guilty as to each Defendant. Accordingly, Plaintiffs ask this court to uphold the Defendants' convictions.

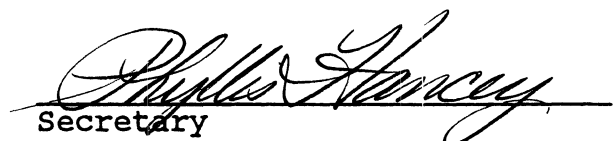
RESPECTFULLY SUBMITTED, this 31st day of December, 1990.


O. Brenton Rowe
Deputy Washington County Attorney

CERTIFICATE OF DELIVERY

This is to certify that I caused four true and exact copies of the within and foregoing BRIEF FOR APPELLANTS to be delivered on the 31st day of December, 1990, to the following:

V. Lowry Snow
Lewis P. Reece
SNOW 7 JENSEN
150 North 200 East, Suite 203
St. George, Utah 84771-2747


Secretary